REMARKS

The above-identified patent application has been amended and reconsideration and re-examination are hereby requested.

The Official Draftsman objected to the drawings because the margins were not acceptable. Applicant will submit substitute formal drawings upon an indication of allowable subject matter.

The Examiner rejected claims 1-3 under 35 U.S.C. 103 as being unpatentable over Egendorf, U.S. Patent 5,794,221 in view of Melen, U.S. Patent 5,956,391, and further in view of Hilt, U.S. Patent 5,465,206.

Applicant believes that claims 1-3, as presented, were patentably distinct over these references. However, to better define terms used in the claims Applicant has amended the claims to state with more specificity the network services which the subject matter of these claims are directed to.

Applicant notes that in the rejection the Examiner did not apply the references to Melen or Hil in rejecting claims 1-3t. Rather, than directing comments solely at Egendorf, applicant submits that the combination of references does not suggest applicant's invention.

Applicant's invention is directed towards capturing the quality of service over a network. The references cited by the Examiner do not relate to such an arrangement. With respect to claim 1, the references neither describe nor suggest providing a subscriber with a network transmission service. The references also do not suggest that the network service has a first characteristic, or observing at the network the provided service, and billing the subscriber for the network transmission service having the second characteristic rather than for the service having the first characteristic.

The reference to Egendorf describes an Internet billing method. However, the billing method is directed to a transaction that occurs between a buyer and seller over the network and involves remittance of funds to the vendor for sales of the product. This reference however, does not relate to the actual quality of network transmission provided over a network. That is, the reference does not describe or suggest network quality of service, as recited in the claim. The

secondary references to Melen and Hilt are likewise dealing with similar types of services as Egendorf, so-called Internet related billing related services involving a business transaction.

Therefore, the combination of these references neither describes nor suggests the subject matter of claim 1 and, hence, claim 1 is patentably distinct thereover.

Applicant's claims 2 and 3 add further patentably distinct features and are likewise not suggested by the references. There is no suggestion in Egendorf of determining that resources are not available for providing the first level of network transmission service and providing a second level of network transmission service as recited in claim 2. Furthermore, as recited in claim 3, there is no suggestion in Egendorf of reassessing and redefining the deployed network transmission service.

The Examiner rejected claims 4-5 under 35 U.S.C. 103 as being unpatentable over Egendorf in view of Hilt. Applicant submits that these claims are patentably distinct over Egendorf and Hilt since the references neither describe nor suggest the limitations of the base claim and moreover the references neither describe nor suggest determining whether reassessment and redefining of the deployed network policy was successful.

Applicant's claim 5 is patentably distinct over Hilt since Hilt does not suggest a packet loss detector. At the quoted paragraph by the Examiner, column 6, line 57 – column 17, line 13, Hilt describes a packet assembler that is used to check account numbers against a copy that is stored in a system. This packet assembler described in Hilt, however, does not suggest a packet detector monitor deployed in a network to generate network accounting records that can be used to determine packet loss.

Accordingly, claims 4 and 5 are patentably distinct over the references.

The Examiner rejected claims 6-10 under 35 U.S.C. 103(a) as being unpatentable over Egendorf in view of Melen. Applicant's claims are patentably distinct over the references for the reasons discussed at least in conjunction with base claim 1. Egendorf does not describe a networking arrangement. Moreover, Melen also does not describe such an arrangement. The Examiner relies upon Melen to describe a differentiated service policy. However, such teachings are not found in Melen. Again, Melen relates to an Internet billing process that results in formation of a transaction over the Internet. However, there are no teachings in Melen of establishing a differentiated service policy that is decomposed into a collection of configurations

Version with markings to show changes made

In the claims:

Claim 1-7 have been amended as follows:

(amended) 1. A computer implemented method comprising

providing a subscriber with a <u>networking transmission</u> service having a first characteristic,

observing at the network[,] that the provided <u>networking transmission</u> service to the subscriber has a second characteristic; and

billing the subscriber for the <u>networking transmission</u> service having the second characteristic rather than for the service having the first characteristic.

(amended) 2. The method of claim 1 wherein observing further comprises:

determining at the network that resources are not available for providing the first level of <u>networking transmission</u> service; and, in response to said determination,

providing a second level <u>of networking transmission</u> service.

(amended) 3. The [metnod] <u>method</u> of claim 2 wherein providing the second level of <u>networking transmission</u> service further comprises:

reassessing and redefining the deployed <u>networking transmission</u> service.

(amended) 4. The method of claim 3 [wherein the process observes] <u>further comprising:</u>

<u>determining</u> whether reassessment and redefining of the deployed <u>networking transmission</u> policy was successful.

(amended) 5.   The method of claim 1 further comprising:

determining whether there has been packet loss; and

wherein determining packet loss comprises [includes]:

   deploying a packet detector monitor in the network to generate network accounting records that can be used to determine packet loss.

(amended) 6.   The method of claim 1 wherein [the] providing further comprises:

establishing a differentiate services policy that is decomposed into a collection of configurations and deployed in a network.

(amended) 7.   The method of claim 1 wherein [the] providing further comprises:

deploying the configurations to a collection of routers or switches that the customer would have access to in the network.